

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20314-1000

ER 1140-1-211

CEMP-CN

Regulation
No. 1140-1-211

15 August 2011

Support for Others
NON-DEPARTMENT OF DEFENSE REIMBURSABLE SERVICES

1. Purpose. This regulation provides guidance on USACE performing reimbursable work for non-Department Of Defense entities. This work is further defined and described in paragraphs 5 and 6. The USACE Homepage contains a web site for the Interagency and International Services (IIS) program which is located at: <http://usace.army.mil/CEMP/iis/Pages/Home.aspx>. Included at this site is policy and guidance on interagency and international services (IIS), a listing of program authorities, customers and services, model memorandum of agreement (MOAs), support agreements and a database of existing MOAs.
2. Applicability. This regulation applies to HQUSACE elements, major subordinate commands, districts, centers and field operating activities (FOA).
3. Distribution Statement. Approved for public release. Distribution unlimited.
4. References. See Appendix A.
5. Definitions.
 - a. Memorandum of Agreement (MOA). A written agreement that defines general areas of conditional agreement between two or more parties where one party agrees to provide services if the other party provides the funds. USACE reimbursable services arrangements will generally be defined in a MOA. MOAs should be supplemented with support agreements that define the support, basis for reimbursement for each category of support, the billing and payment process, and other terms and conditions of the agreement. Dep't of the Treasury (DoT) Financial Management Service (FMS) Form 6-10 7600A, "Interagency Agreement (IAA) – Agreement Between Federal Agencies, General Terms and Conditions (GT&C) Section" and the USACE appendices (available via the IIA website) provide an updated standardized MOA format.
 - b. Memorandum of Understanding (MOU). A written agreement that defines general areas of understanding between two or more parties that does not require reimbursement and each party operates fully within the limits of their existing programmatic authority.

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c. Support Agreement/Interagency Agreement. A numbered form, which may include a narrative addendum, co-signed by appropriate representatives of USACE and the other agency, by which specific engineers, construction, technical, administrative and/or logistical support is provided by one party with funds provided by the other party. ENG Form 4914-R, U.S. Army Corps of Engineers Interagency Agreement (Appendix B) or similar interagency agreement document (from another party) may be used for this purpose. Normally ENG Form 4914-R will be used with a valid MOA. ENG Form 4914-R with attachment B, (See IIS website) will be used when no MOA exists. ENG Form 4914 may be locally reproduced. Alternatively, for MOAs that have been entered into using DoT FMS Form 6-10 7600A, the support agreement/interagency agreement must be executed using DoT FMS Form 7-10 7600B, "Interagency Agreement (IAA) – Agreement Between Federal Agencies, Order Requirements and Funding Information (Order) Section."

d. Interagency and International Services (IIS). IIS is work performed by USACE under applicable Federal law and funded by non-DOD Federal agencies; States, local governments of the United States; private firms, other nations, and international organizations. For purposes of this regulation, the term "states" includes any of the 50 States of the United States, plus the District of Columbia; Indian tribes; the Commonwealths of Puerto Rico and Northern Mariana Islands; the Territories of the U.S. Virgin Islands, Guam and American Samoa.

6. Work not covered by this regulation. This regulation is not applicable to the activities outlined below.

a. USACE legislatively mandated programs. IIS does not include activities for which USACE receives funds directly from Congress.

b. Emergency work.

(1) Emergency work requested by the Federal Emergency Management Agency under the provisions of Public Law 93-288 and performed in accordance with ER 500-1-1.

(2) Emergency dredging work performed under the provisions of Public Law 95-269. This work shall be reported to CDR HQUSACE (CECW-CO) Washington, D.C. 20314-1000 upon completion.

(3) Other emergency work such as cleanup of spills or emergency relocations.

c. Work for DoD agencies. The IIS Program and this regulation are not applicable to work for DoD agencies. NOTE: National Guard activities are considered DOD if funding is provided by DoD. If funding is provided in whole or part to USACE by the state government then the rules for state and local support apply. (see para. 11)

d. Reimbursable assistance by USACE laboratories. ER 70-1-5 is applicable to this work.

- e. Foreign military sales and security assistance programs.

7. Guidance on Considering non-DOD Reimbursable Opportunities.

a. General. Within the guidelines listed below, USACE Commands and members are encouraged to be active participants in the IIS program by:

(1) Providing services that maintain or enhance USACE competencies and ability to perform its assigned missions or enhance USACE capabilities to respond to new challenges consistent with USACE's purpose.

(2) Supporting agencies which do not possess technical expertise to fulfill the in-house engineering needs of their programs.

(3) Supporting agencies which do not have the staff to effectively manage environmental, real estate, engineering-design, or construction work being conducted by private firms under contract.

(4) Supporting strategic customers at the international, national, regional and local level.

b. Customer Relations Management Planning. HQUSACE has identified customers considered to be of national strategic importance and has assigned certain USACE SES and Commanders the role of Executive Liaison (EL) with those customers. This information is on the IIS website. USACE Commands are encouraged, under the leadership of each EL, to develop customer relationship management plans to guide interactions with their regional and local counterparts of the national strategic customers and with other customers of regional or local importance.

c. Management objectives. Potential clients should be advised that IIS work will be managed following the program and project management policies and procedures specified in ER 5-1-11, as appropriate, including assignment of a project manager, monitoring and accountability for project costs and schedules, and managing project data in the Project Management Information System. In addition, Federal agency clients should be advised of value management/engineering requirements set forth in OMB Circular A-131. While the primary objective is to provide the client a quality product, on time, and within the established budget, other equally important objectives that the potential client should be cognizant of include:

(1) Use of the full breadth of USACE technical and project management skills and review procedures at the appropriate level. However, work may be accepted, and the client charged appropriately, where only one or a few of USACE technical skills are desired.

(2) Use of the design and construction talents of the private sector where feasible.

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(3) Recognition that the client will retain responsibility for all costs associated with budgetary justification, and legal liability incurred by USACE.

d. USACE responsibility to customers.

(1) Maintaining open communications with the customer to include setting realistic expectations, updates on work progress and budget status;

(2) Fostering a corporate spirit and personal attitude of cooperation;

(3) Being responsive to customers by providing fair, reasonable and timely answers;

(4) Including the customer in all applicable Project Delivery Team (PDT) meetings;

(5) Ensuring meaningful participation by the customer in decisions about all aspects of the work scheduling, development, project planning, standards, acquisition strategy and execution;

(6) Ensuring quality technical, managerial, and administrative work and products;

(7) Fostering creativity and flexibility;

(8) Being accountable for the appropriate and efficient use of customer funds.

e. Competitive proposals. USACE Commands will not respond to Requests for Proposals (RFPs) nor respond to requests for assistance when an agency is in the process of negotiating with a private firm for the same services without specific approval from HQUSACE. USACE commands should contact CEMP-CN before accepting work previously performed by a private firm.

8. Approval Authorities.

a. MSC authorities. Major Subordinate Command (MSC) Commanders and heads of FOA are empowered and encouraged to accept reimbursable work and sign agreements when all the following conditions are met. MSC Commanders may delegate their authority to district commanders. Please note that this delegation of authority does not extend to USACE placing USACE orders for services from other Federal agencies. In that situation, please consult the FAR, DFARS, AFARS, EFARS and other appropriate contracting guidance.

(1) The work must comply with the criteria checklist and accompanying instructions in Appendix D. Questions about a request for support or completion of the worksheet in Appendix D should be addressed to CEMP-CN.

(2) The work can be accomplished within the existing MSC resource allocations until the next Corps of Engineers Manpower Requirements System (CEMRS) cycle without compromising any goals or otherwise creating delays in USACE civil works or military programs functions.

(3) The work is within the MSC's civil works boundary, unless other customer boundaries (e.g., Superfund) have been established by HQUSACE. If a request for reimbursable work falls outside an MSC's boundary, the requested MSC must consult with the geographic MSC where the work will occur and if concurrence cannot be obtained submit the matter to CEMP-CN.

(4) Other applicable requirements of the Engineer Regulations referenced in Appendices A and E of this regulation are met.

b. HQUSACE Approval. Opportunities exceeding the authority cited in paragraph 8a must be approved by HQUSACE.

c. OASA(CW) Approval. All national level agreements with non-DoD Federal agencies, agreements with foreign governments or international organizations will be coordinated with OASA(CW) on the content and appropriate signature level. See also paragraph 11.a (2).

9. HQUSACE Management of Selected Reimbursable Programs. Certain programs are centrally managed by HQUSACE. For these programs, USACE entities should undertake work in accordance with HQUSACE guidance for each program. Appendix E provides a listing of these programs.

10. Work for Federal Agencies. The Economy in Government Act (31 U.S.C. 1535) is the primary authority for providing support to Federal agencies. An ordering agency may use 31 U.S.C. 1535 to place an order with USACE and USACE may use 31 U.S.C. 1535 to accept the orders to provide goods or services. Two other authorities that allow USACE to support other Federal agencies are 10 U.S.C. 3036d and 33 U.S.C. 2323a. These authorities only allow USACE to provide services; the requesting agency must have an authority other than the Economy Act to request services. 33 U.S.C. 2323a provides USACE authority to support other Federal agencies on problems of national significance related to infrastructure development, water resources or environmental protection.

11. Work for State and Local Governments. All decisions and agreements with State and local governments must include an exit strategy to end USACE support within a period of 5 years or less. In addition, work cannot be accepted related to an authorized Federal (USACE) project without approval by HQUSACE (CECW). Contact the appropriate Regional Integration Team (RIT) for guidance.

a. Work Not Involving Federal Funding Assistance.

(1) The Intergovernmental Cooperation Act (31 U.S.C. 6505) is the primary authority for providing support to state and local governments (Support to Indian Tribes is not authorized under

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31 U.S.C. 6505) when there is no Federal funding assistance involved. OMB Circular A-97 Revised and DOD Instruction 4000.19 provide general guidance and define the scope of technical services that may be provided. This includes studies and planning activities, engineering and design (including plans and specifications), construction management assistance and training.

Under this authority, USACE may not enter into contracts to provide the necessary service. It can, however, provide contract management assistance limited to technical advice to improve State and local management capability in contract preparation, negotiating, and evaluation; contract administration; quality assurance; and supervision and inspection. Commanders must concur in the certification required by paragraph 7c of Appendix F. USACE Commands may not acquire real estate for a State or local government under 31 U.S.C. 6505. Questionable cases should be referred to HQUSACE (CEMP-CN) Washington, D.C. 20314-1000 for resolution.

(2) Section 211 of Public Law 106-541 places additional requirements on USACE before providing technical assistance to a State or local government under 31 U.S.C. 6505. The ASA(CW) is required to ensure that the requirements of 31 U.S.C. 6505 are met and execute a certification that includes adequate facts to establish that USACE is uniquely equipped to perform the services. See IIS website for further guidance.

b. Work Involving Federal Funding Assistance. 10 U.S.C. 3036(d) provides authority for USACE to provide services including being the contracting agency for a State, local, or Tribal government, provided the work involves Federal funding assistance from an agency other than USACE and the department or agency providing the Federal funding certifies that it does not object to this use of the Federal funds. The services would normally be those associated with Government management functions that involve the exercise of discretion in applying Government authority and the use of value judgments in project management in the role of contracting officer.

c. Work in conjunction with USACE funds. 33 U.S.C. 560 (navigation) and 33 U.S.C. 7012h (flood control and environmental restoration) provide USACE authority to accept funds from state and local governments to be expended in connection with funds appropriated to USACE. See ER 1165-2-30 CH1.

12. Work in Other Countries. USACE may, under various authorities, provide support in other countries. A summary of requirements is provided below. All work in other countries is to be coordinated with the appropriate stakeholders. See IIS Website link on International Activities Coordination and Alignment. More information may be obtained on the IIS CoP website or from CEMP-CN.

a. Special Requirements. In addition to the general guidance provided elsewhere in this regulation there are special requirements that pertain to work in other countries.

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(1) Privileges and Immunities (P&I). DOD military and civilian personnel are not permitted to undertake work in their official capacity in another country unless they have been granted sufficient privileges and immunities from host nation legal jurisdiction. Typically, this grant of immunity is found in a Status of Forces Agreement (SOFA) or other international agreement between the United States and the host nation covering the work in question. If there is no existing SOFA or other agreement, immunities at least equal to that of Administrative and Technical staff of the U.S. Embassy in the host nation must be obtained. This prohibition does not prevent work from taking place outside of the host nation. The required grant of immunity can often be effectuated through an exchange of diplomatic notes between the U.S. Embassy and the Foreign Ministry of the host nation. This action must be coordinated through the embassy. This policy does not apply to USACE personnel acting in direct support of the Combatant Commander (COCOM) during a military operation or where the COCOM determines the needs of the operation outweighs the risks of operating in the country without P&I. In addition some SOFAs are classified documents, and thus the embassy should be contacted to determine if USACE personnel will be covered by an agreement that is not generally available for review.

(2) U.S. Embassy Approval. USACE will undertake no work in another country without the concurrence of the U.S. Ambassador. In many instances this concurrence is obtained by the agencies we support or as part of the normal approval process. In cases where this has not occurred, the USACE office providing the support should contact the U.S. military group at the Embassy.

(3) Establishing Offices Overseas. USACE offices wishing to establish offices in another country must comply with National Security Decision Document 38. Delegation of authority to the MSC Commanders to process such requests can be found on the IIS website.

(4) Foreign Travel. Guidance on foreign travel is available on the IIS website. Travelers should consult the DOD Foreign Clearance Guide and Logistics Activity Center (LAC) concerning passport, visa, clearance, training, and personal data requirements needed for approval of travel orders

(5) Theater, Country and Special Areas Clearances. USACE travel to most countries requires Theater and Country Clearances. The DOD Foreign Clearance guide provides specific details of what is necessary for each country. The LAC will prepare and process clearance requests.

(6) Host Nation Capacity Development. To the extent possible our work overseas should contribute to the development of expertise of the host nation to reduce their dependency upon outside assistance. This should include demonstrating how public and private institutions should synergistically work together.

(7) MSCs are responsible for ensuring that all USACE activities in other countries are entered into the Army Global Outlook System (ARGOS).

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b. Work for Other Nations and International Organizations: Section 607 of the Foreign Assistance Act (FAA) (22 U.S.C. 2357) and 33 U.S.C. 2323a are authorities used for providing civil works type support to other nations. The Arms Export Control Act is the authority used for providing support of a military nature (Foreign Military Sales) and is beyond the scope of this regulation. A Letter of Offer and Acceptance (LOA) is an agreement that is executed to undertake work for other nations and international organizations. Guidance on the LOA process is on the IIS website.

c. Work for U.S. Firms in Other Countries. 33 USC 2314a authorizes USACE to provide technical assistance to any United States firm that is competing for, or has been awarded, a contract for the planning, design, or construction of a project outside the United States. The firm must certify that such assistance is not otherwise reasonably and expeditiously available and the USACE office providing the support must obtain approval from the U.S. Embassy in the country where the firm's contract will be executed. The IIS website contains conditions, further guidance and a draft Technical Assistance Agreement.

13. Relationships with the Private Sector. The USACE reimbursable program is accomplished in partnership, not in competition, with the private sector. USACE relies heavily on the talents of private firms to execute its missions. Private firms are the primary source of engineering services for state, local and tribal governments. USACE actions are not to displace or compete with private firms. The USACE role is to function as an extension of the customer agency's staff providing Federal presence and government oversight to protect the taxpayers' interests. This capability can relieve the customer agency of the burden of hiring and training specialists to perform these functions. In this respect, the Corps offers proven contract management experience and effectiveness to assist other agencies in the execution of their missions.

14. Personnel Resourcing. Work initiated after staffing allocations have been made for the fiscal year will be resourced from within MSC staffing allocations. For subsequent fiscal years, the work must be included in the CEMRS submittals, as appropriate, following the guidance in Appendix C.

15. Funding. USACE bills the customer for all costs incurred to provide goods and services on a reimbursable or advance-of-funds basis, depending on the nature of the customer and the legal authority used.

a. Non-Federal customers (including states and local governments). Funds must be on deposit with the Treasury in advance of USACE Commands' incurring obligations for the work. USACE withdraws funds from the advance account as work is performed.

b. Federal agencies provide funding to USACE as stated in the applicable agency agreement. Each agreement may use one or more of the following funding methods:

(1) Federal agencies may provide a reimbursable order to USACE as obligation authority. USACE bills the customer on a monthly basis for the actual cost to provide goods or services. Billings are processed through Treasury's Interagency Payment and Collections (IPAC) System.

(2) Federal agencies may provide a Direct Fund Cite government order authorizing USACE to cite the customer's funds directly on contract awards.

(3) Federal Agencies may process Standard Form (SF) 1151, Nonexpenditure Transfer Authorization, to formally transfer funds in the U.S. Treasury to USACE. This method is used only for large projects or undertakings. The SF 1151 is prepared and forwarded by the transferring agency through the U.S. Treasury to CDR HQUSACE (CERM) Washington, D.C. 20314-1000. Funds are subsequently allotted to the district on a Funding Authorization Document.

16. Finance, Accounting and Manpower. Financing and accounting for IIS work shall be in accordance with the financial management regulations shown in Appendix A of this regulation. Non-DOD funded national defense activities, in most cases, will be classified as military reimbursable projects for the purpose of financial management. Guidelines for classifying support for other activities are outlined in Appendix C.

17. Public Information. In general, USACE should refer to the customer all requests for specific project information.

18. Notification and Approval Procedures.

a. Work approved within MSC Commander's authority. Following acceptance of the work (within 30 days) USACE Commands will provide information including the scope, estimated staffing requirements, and Circular A-97 certification with Commander concurrence where applicable (see paragraphs 11a and 11b above) to HQUSACE (CEMP-CN) Washington, D.C. 20314-1000.

b. Real estate work. In providing reimbursable real estate services, normal USACE policies and procedures will be followed (see ER 405-1-12). Any deviation must be approved by CERE-CR.

c. Hazardous, toxic and radioactive wastes (HTRW). Acceptance and performance of hazardous, toxic and radioactive waste work will be in accordance with ER 1110-2-500. (See Appendix E).

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d. Other reimbursable opportunities. Nothing in this regulation is intended to change existing notification and approval procedures for reimbursable work not specifically addressed in this regulation. This includes work for DOD agencies, and research and development work.

FOR THE COMMANDER:

6 Appendices

Appendix A - References

Appendix B - ENG Form 4914-R

Appendix C - Guidelines for Classifying

Interagency and International
Services (IIS)

Appendix D – Guidance for Evaluating
Requests for non-DOD Reimbursable
Support Services Worksheet
Instructions and Worksheet for Analysis
of NON-DOD Reimbursable Support
Services Request

Appendix E - Reimbursable Programs
Centrally Managed by HQUSACE

Appendix F - OMB Circular A-97



DIONYSIOS ANNINOS

Colonel, Corps of Engineers
Chief of Staff

APPENDIX A

References

10 U.S.C. 3036(d), "Chief's" Economy Act

15 U.S.C. 3710a, et seq., Federal Technology Transfer Act

22 U.S.C. 2357, Foreign Assistance Act

31 U.S.C. 1535, Economy in Government Act

31 U.S.C. 6505, Intergovernmental Cooperation Act, to include Section 211 of Public Law 106-541, 114 Stat. 2592 (11 December 2000)

33 U.S.C. 560, Section 4, River and Harbor Act of 1915

33 U.S.C. 701h, Civil Functions Appropriations Act of 1937, as amended in Section 203 of Public Law 106-53.

3 U.S.C. 2314a, Technical Assistance Program

33 U.S.C. 2323a, Interagency and International Support Authority

42 U.S.C. 5121, et seq., Disaster Relief and Assistance Act

OMB Circular A-97 Revised, Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968

OMB Circular A-76 Revised, Performance of Commercial Activities, March 1996

ER 5-1-10, Corps-wide Areas of Work Responsibility

ER 5-1-11, U.S. Army Corps of Engineers Business Process

ER 5-1-16, Capacity Development-International

ER 37-2-10, Accounting and Reporting, Civil Works Activities, CH 1

ER 37-345-10, Accounting and Reporting, Military Activities, CH 1

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ER 70-1-5, Corps of Engineers Research and Development Program

ER 500-1-1, Natural Disaster Procedures

ER 550-1-1, International Agreements

ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies

ER 1110-2-500, Corps/EPA Superfund Program Funding and Reporting Requirements

ER 1165-2-30, Acceptance and Return of Required, Contributed or Advanced Funds, CH-1

DoD Instruction 4000.19, Interservice, Interdepartmental and Interagency Support

CEMP-N, Commander's Policy Memorandum #7, 10 Feb 98, subject: Reimbursable Support and Our Relationships with the Private Sector

CEMP-N, Memorandum for Commanders, Major Subordinate Commands, 8 Feb 01, subject: Interim Guidance on Services for Federal Agencies and State and Local Governments

DoD Financial Management Regulation (DoD FMR) 7000.14-R

DAMO-SSI Policy Letter dated 14 Aug 09, subject: Reissuance of Army Global Outlook System (ARGOS) Policy

| | | | |
|---|-----------|---|-----------|
| U.S. ARMY CORPS OF ENGINEERS INTERAGENCY/SUPPORT AGREEMENT <i>(ER 1140-1-211)</i> | | 1. AGREEMENT NO. | |
| | | 2. <input type="checkbox"/> INITIAL AGREEMENT <input type="checkbox"/> AMENDMENT NO. _____ | |
| 3. PROJECT TITLE | | 4. EFFECTIVE DATE | |
| | | 5. COMPLETION DATE | |
| 6. NAME AND ADDRESS OF USACE ORGANIZATION | | 7. NAME AND ADDRESS OF OTHER AGENCY | |
| 8. SCOPE OF WORK <i>(Additional pages may be used as needed)</i> | | | |
| 9. SPECIAL PROVISIONS <i>(Additional pages may be used as needed)</i> | | | |
| a. All rates expressing the unit cost of services provided in this agreement are based on current rates which may be subject to change for uncontrollable reasons, such as legislation, DoD directives, and commercial utility rate increases. The receiver will be notified immediately of such rate changes that must be passed through to the support receivers. | | | |
| b. This agreement may be cancelled at any time by mutual consent of the parties concerned. This agreement may also be cancelled by either party upon giving at least 60 days written notice to the other party. | | | |
| c. In case of mobilization or other emergency, this agreement will remain in force only within supplier's capabilities. | | | |
| 10. USACE PROJECT OFFICER | TELEPHONE | 11. OTHER AGENCY PROJECT OFFICER | TELEPHONE |
| ADDRESS | | ADDRESS | |

| | | | |
|---|-----------------|--------------------|---------------|
| 12. REPORTS <i>(Requirements and Frequency)</i> | | | |
| 13. FUNDS <i>(Page(s) with cost breakdown may be attached as necessary)</i> | | | |
| SOURCE | PREVIOUS AMOUNT | AMOUNT THIS ACTION | AMENDED TOTAL |
| a. USACE AMOUNT | | | \$0.00 |
| b. OTHER AGENCY AMOUNT | | | \$0.00 |
| c. TOTAL PROJECT COST | \$0.00 | \$0.00 | \$0.00 |
| 14. FUNDING Funds will be provided by: a. <input type="checkbox"/> Transfer Appropriation <i>(SF 1151, Now-Expenditure Transfer Authorization)</i> <input type="checkbox"/> Reimbursable Order <i>(31 USC 1535 - Economy Act)</i> <input type="checkbox"/> Other <i>(describe)</i> b. Appropriation: | | | |
| 15. BILLING a. Request for payment will be made by: <input type="checkbox"/> SF 1080 <input type="checkbox"/> SF 1081 <input type="checkbox"/> Other <i>(describe)</i> b. Frequency <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Upon work completion <input type="checkbox"/> Other <i>(describe)</i> c. Request for payment will cite the following accounting information <i>(describe necessary documentation)</i> : d. Submit to: | | | |
| 16. AUTHORITY | | | |
| 17. APPROVALS | | | |
| a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR USACE | SIGNATURE | DATE | |
| a. NAME AND TITLE OF AUTHORIZING OFFICIAL FOR OTHER AGENCY | SIGNATURE | DATE | |

APPENDIX C

Guidelines For Classifying Interagency and International Support (IIS)

1. Non-Department of Defense (DOD) Civil IIS. If the work to be performed by the Corps is strictly civil oriented (not related to national defense), the work will be accounted for as "civil IIS," using civil work years and personnel compensation. Civil IIS includes the following:
 - a. Work from a non-Federal agency such as a city, county or state.
 - b. Work from a Federal agency which is funded from a non-DOD appropriation and the physical work cannot be considered defense related. (An example is the EPA Superfund program.)
2. Non-DOD National Defense Related IIS. If work is funded by non-DOD appropriations and the work can be considered national defense related, the work should be accounted for as "military" unless other guidance is provided by HQUSACE. It may be necessary to determine this classification by using the appropriation account definition, legislation authorizing the program, Committee report language from appropriations acts, or internal agency documents. If Civil Works personnel work on a non-DOD national defense related project, the in-house labor costs are charged to a military account. If military full-time permanent or temporary personnel work on a non-DOD project, the in-house costs are charged to the military account and the effort is supported by military allocations.
3. Work Funded by DOD Appropriations. This work will be accounted for as "military" and will use applicable regulations for military accounting.

APPENDIX D

Guidance For Evaluating Requests For Non-DoD Reimbursable Support Services Worksheet Instructions

PURPOSE: The majority of the Corps non-DOD reimbursable support work is governmental function support to Federal agency customers. However, a certain percentage of opportunities involve new types of work or new customers, and may require a policy determination from higher authority before work may be accepted. In order to support the policy determination please complete the attached worksheet.

1. The object of this review is to cause serious and objective consideration of proposed work. At a minimum, proposed work must be consistent with the goals of the Administration, USACE must have the capability to provide the required support, and the execution of the work can be accomplished within regulatory rules. The worksheet serves as a reminder that state and local and international work are special categories of work and execution of such work must be within the parameter of regulation and policy.
2. The worksheet is used as a checklist prior to making any commitments to the requesting agency. Each question is to be answered.
3. If the MSC or Lab Director
 - is unable to answer a question from the initial application of the criteria but feels further evaluation is warranted, or
 - has some doubt concerning acceptance of the work, or
 - believes there is potential to draw criticism to the Corps from the Administration, Congress, private sector, public interest groups, or
 - is considering a request for work for a Federal agency that requires HQUSACE or OSA(CW) approval, is for public schools, or state and local work under the Intergovernmental Cooperation Act, or work for foreign governments or any other work that HQUSACE has withdrawn MSC approval authority the proposed case will be forwarded to HQUSACE (CEMP-CN). E-mail contacts are encouraged to expedite responses. For such cases, all pertinent information should be forwarded to HQUSACE (CEMP-CN). HQUSACE will make a decision on whether to proceed based upon analysis of this information, external factors and discussions with the MSC representative.

Worksheet For
Analysis Of Non-DoD Reimbursable Support Services Request

I. Major Subordinate Command:

II. Program Information:

A. Proposed Customer:

B. Brief Description of Proposed USACE Support:

C. **Location of Project Sites:**

D. Estimated Magnitude of USACE Effort (Over life Of Program):

1. Expected Average Annual Workload (\$\$\$): _____

2. Estimated Average Annual Number of FTEs: _____

E. Evaluation Criteria:

1. Importance to the Nation (Federal Agencies Only).

Describe using such factors as whether the customer is on USACE national strategic customer list, included in an MSC approval regional outreach plan, is meeting public health and safety objectives or other recognizable level of importance.

2. Nature of Work.

a. Describe previous experience with this kind of work.

b. Describe previous experience with this customer.

c. Describe how the work sustains or enhances USACE core competencies.

d. Ensure work does not solely involve procurement of equipment or provision of legal services.

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e. explain how work is not expected to receive significant interest group opposition.

f. Is customer a public school authority, foreign government or international organization?
If yes, seek HQUSACE approval from CEMP-CN.

g. Does request for new work for a Federal agency require a new MOA? If yes, seek HQUSACE approval from CEMP-CN.

h. Explain plans to use the private sector and if the private sector will not be involved, explain why.

3. Standard Procedures.

a. Describe deviations from model MOA provisions and show counsel approval.

b. Does the work conform to procedures in ER 1140-1-211 and ER 5-1-10.

4. Resources.

a. Describe resources required and ensure availability in 1st year.

b. Determine to what extent, if any, work adversely impacts traditional or on-going non-DOD reimbursable support services. If there could be an impact, how will this be mitigated?

5. State and Local Work.

a. Determine the authority for performing requested work.

(1) If the authority is 31 USC 6505 (Intergovernmental Cooperation Act (ICA)), obtain the written request describing the scope of the services to be performed and agreement for reimbursement of all costs and validate the certification with adequate facts to establish that the services requested are not reasonably and quickly available through ordinary business channels. The certification from the requesting government must contain the following statement: "The [name of requesting entity] certifies that it cannot obtain the requested services reasonably and quickly through ordinary business channels." Develop adequate facts to establish that the Corps is uniquely equipped to perform such services. Validate compliance with all requirements of the ICA, OMB Circular A-97 and Section 211 of WRDA 2000. Forward the request with customer certification to CEMP-CN. If the request for support under the ICA is turned down by the MSC

or Lab, inform CEMP-CN of the request and reason for turn down using the quarterly report form.

(2) If the authority is 10USC 3036(d), confirm that the work involves Federal financial assistance and the non-Federal government entity has provided a written request and has certified that the services requested cannot be obtained reasonably and expeditiously through ordinary business channels. Show the Commanders concurrence in this certification. Provide evidence that the federal funding agency does not object to USACE support.

(3) Consult with your Office of Counsel if another authority is used, confirm that the guidance applicable to those authorities has been followed.

b. Describe the USACE exit strategy that was discussed with the customer.

6. International Work for Federal Agencies Only. (All other international work requires HQUSACE approval.)

a. Reference U.S. Foreign policy work supports.

b. Reference documentation that U.S. Embassy does not object to USACE involvement.

c. Who made the request for support. If from Washington-level, who at HQUSACE was involved?

d. What work has been performed in this country before.

e. How have privileges and immunities been addressed to protect USACE and its contractor personnel.

III. Completed By: _____ Office Symbol: _____ Date: / /
 Printed Name

Counsel Review By: _____ Date: / /
 Printed Name

ER 1140-1-211
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APPENDIX E

Reimbursable Programs Centrally Managed By HQUSACE

| <u>Program</u> | <u>HQUSACE Proponent</u> | <u>Applicable Documents</u> |
|--|------------------------------|---|
| Support to FEMA for National Flood Insurance Program | CECW-PD | - ER 1105-2-100 |
| Hazardous, Toxic, or Radiological Waste (HTRW) | CEMP-CE | - ER 1110-2-500 - HTRW Management Plan (Current version) |
| Corps Support for HUD's Public Housing Modernization Program | CEMP-CN | - MOA, dated 24 September 1993. Copies available from CDRUSACE (CEMP-CN) Washington, D.C. 20314-1000 |
| Real Estate Support to the Department of Energy | CERE-CR | - MOU, dated 23 November 1982. Copies available from CDRUSACE (CERE-A) Washington, D.C. 20314-1000 |

APPENDIX F

Circular No. A-97

29 August 1969

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of government under Title III of the Intergovernmental Cooperation Act of 1968

1. Purpose. This Circular promulgates the rules and regulations which the Director of the Bureau of the Budget is authorized to issue pursuant to Section 302 of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577; 82 Stat. 1102). It also provides for the coordination of the action of Federal departments and agencies (hereinafter referred to as "Federal agencies") in exercising the authority contained in Title III of said Act as directed by the President's Memorandum of November 8, 1968 (33 F.R. 16487).

2. Background.

a. Title III of the Intergovernmental Cooperation Act of 1968 is intended to:

(1) Encourage intergovernmental cooperation in the conduct of specialized or technical services and provisions of facilities essential to the administration of State or local governmental activities.

(2) Enable State and local governments to avoid unnecessary duplication of special service functions.

(3) Authorize Federal agencies which do not have such authority to provide reimbursable specialized and technical services to State and local governments.

b. Title III of the Act authorizes the head of any Federal agency, within his discretion and upon written request from a State or political subdivision thereof, to provide specialized or technical services, upon payment to the Federal agency by the unit of government making the request, of salaries and all other identifiable direct or indirect costs of performing such services.

c. Title III of the Act requires that:

(1) Any services provided pursuant to Title III shall include only those which the Director of the Bureau of the Budget through rules and regulations determines Federal agencies have special competence to provide.

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(2) The Director's rules and regulations shall be consistent with, and in furtherance of, the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels.

(3) All moneys received by any Federal agency in payment of furnishing specialized and technical services under Title III of the Act shall be deposited to the credit of the principal appropriation from which the cost of providing such services has been paid or is to be charged.

(4) The head of any Federal agency shall furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under Title III.

3. Reservation of existing authority. The authority contained in Title III of the Act and this Circular is in addition to, and does not supersede, any existing authority now possessed by any Federal agency with respect to furnishing services, whether on a reimbursable or non-reimbursable basis, to State and local units of government. The reporting and other requirements and conditions contained in this Circular shall not apply to services furnished under such existing authorities.

4. Definitions. For purposes of this Circular:

a. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of a State.

b. The terms "political subdivision" or "local government" mean a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law, or combinations thereof.

c. "Specialized or technical services" means statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions which any Federal agency is especially equipped and authorized by law to perform.

5. Policy. Federal agencies will cooperate to the maximum extent possible with State and local units of government to provide such specialized or technical services as may be authorized. Such services shall generally supplement, not supplant existing services, and Federal agencies should not provide services with full reimbursement under this Circular which have heretofore been

furnished for less than full reimbursement under other authorities, unless specifically requested to do so.

6. Types of services that may be provided.

a. It is hereby determined that Federal agencies have the special competence to provide, and may provide the following specialized or technical services, and facilities related thereto, pursuant to Title III of the Intergovernmental Cooperation Act of 1968:

(1) Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved.

(2) Preparation of statistical and other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which the Federal agency is authorized by law to conduct or prepare.

(3) Training of the type which the Federal agency is authorized by law to conduct for Federal personnel and others or which is similar to such training.

(4) Technical aid in the preparation of proposals for development and other projects for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.

(5) Technical information, data processing, communications and personnel management systems services which the Federal agency normally provides for itself or others under existing authorities.

b. Any of the above specialized or technical services provided to the States and their political subdivisions under existing authorities may also be provided under Title III of the Act and the terms of this Circular.

c. If a Federal agency receives a request for specialized or technical services which are not covered in subparagraph a above and which it believes is consistent with the Act and which it has a special competence to provide, it should forward such request to the Bureau of the Budget for action. Similarly, if there is doubt as to whether the service requested is covered by subparagraph a, the request should be forwarded to the Bureau of the Budget for action.

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7. Conditions under which services may be provided. The specialized or technical services provided under Title III of the Act and this Circular may be provided, in the discretion of the heads of Federal agencies, only under the following conditions:

a. Such services will be provided only to the States, political subdivisions thereof, and combinations or associations of such governments or their agencies and instrumentalities.

b. Such services will be provided only upon the written request of a State or a political subdivision thereof. Requests will normally be made by the chief executives of such entities and will be addressed to the head of the agency involved.

c. Such services will not be provided unless the agency providing the services is providing similar services for its own use under the policies set forth in the Bureau of the Budget Circular No. A-76, "Policies for acquiring commercial or industrial products and services for Government use" (Revised August 30, 1967). In addition, in accordance with the policies set forth in Circular No. A-76, the requesting entity must certify that such services cannot be procured reasonably and expeditiously by it through ordinary business channels.

d. Such services will not be provided if they require any additions of staff or if they involve outlays for additional equipment or other facilities solely for the purpose of providing such services, except where the costs thereof are charged to the user of such services. Further, no staff additions may be made which impede the implementation of or adherence to the employment ceilings contained in the Bureau of the Budget allowance letters.

e. Such services will be provided only upon payment or provision for reimbursement to the Federal agency involved, by the unit of government making the request, of salaries and all other identifiable direct and indirect costs of performing such services. For cost determination purposes, Federal agencies will be guided by the policies set forth in the Bureau of the Budget Circular No. A-25, "User Charges" (September 23, 1959).

f. Any payments or reimbursements received by Federal agencies for the costs of such services will be deposited to the credit of the principal appropriation or other account from which the costs of providing the services have been paid or are to be charged.

g. in the event a request for a service is denied, the Federal agency shall furnish the entity making the request with a statement indicating the reasons for the denial.

8. Reports to Congress. The head of each Federal agency will furnish annually to the respective Committees on Government Operations of the Senate and House of Representatives a summary report on the scope of the services provided under Title III of the Act and this Circular. Such reports will be prepared as of the end of each calendar year and will indicate the nature of the services rendered, the names of the States and political subdivisions involved, where practical, and the cost of the work. Services provided under other authorities are not to be included in the

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reports. Copies of the reports will be submitted to the Bureau of the Budget not later than March 30 of each year.

9. Effective date. This Circular is effective immediately. It supersedes the "Interim Regulation under Title III of the Intergovernmental Cooperation Act of 1968 (P.L. 90-577)," dated December 19, 1968, concerning training by the U.S. Civil Service Commission.

10. Inquiries. Inquiries regarding this Circular may be addressed to the Office of Executive Management, Bureau of the Budget, Washington, D.C. 20503, or telephone (202) 395-4934

ROBERT P. MAYO

Director